Supreme Court, U.S.
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No. 90-1235

In the

Supreme Court of the United States

Jet Charter Service, Inc.,

Petitioner,

vs.

Banque Paribas (Suisse), S.A.,

Respondent.

Reply to Brief in Opposition

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on Petition for Writ of Certiorari
to the United States Court of Appeals
for the Eleventh Circuit

William VanDercreek
3375-A Capitol Circle NE
Tallahassee, FL 32308
(904) 385-1103

Counsel of Record
for the Petitioner

EDITOR'S NOTE:

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PETITIONER'S REPLY BRIEF

I. Question Presented was based on facts set forth in Eleventh Circuit opinion that counter-statement of Question seeks to ignore.

The Respondent Swiss bank in opposing the grant of Certiorari seeks to restate the Question Presented contrary to the undisputed facts in the opinion below. (Brief for Respondent in Opposition, pp. i and 2). These undisputed facts are critical to the constitutional due process question of jurisdiction over the person which requires an analysis of several factors. Among other matters, the letter of credit that was to be issued and is the subject of this suit was to be made payable to the seller, i.e. Jet Charter. Respondent's statement that it was to be issued "on behalf of the Buyer" is deceptive as the letter was to be issued in favor of the seller as stated by the Eleventh Circuit's opinion:

> Caillet obliged by drafting a letter that represented that Paribas had opened an irrevocable letter of credit in the amount of U.S. $1,800,000 in favor of Jet Charter , that an amended letter of credit would be delivered to Jet Charter in Miami, Florida by 5:00 p.m. EST on November 26, 1985 and that the letter of credit would be payable upon presentation to "Banque Paribas in Miami, Florida (emphasis added)."[1]

The Question Presented to this Court is not whether jurisdiction exists merely because a Swiss bank issued a letter of credit, but whether jurisdiction exists where:

a) the Swiss bank (Respondent) was financing the

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[1] 907 F.2d at 1111, App.A-2,3. The Letter, R5-129, Exh. B, was addressed to "Jet Charter Services, Inc. 3095 N.W. 77th Avenue, Miami, FL, 33122." The Bank Paribus, in Miami, was a French "cousin" of the Respondent. App.3, n.1.

multi-million dollar purchase of two United States registered aircraft that were to be sold in Florida;

b) the Swiss bank in conjunction with the sale in Florida to its customer the buyer, was in addition to issue a letter of credit in favor of the Florida seller (Petitioner) to be delivered in Florida at closing;

c) at the Florida closing, the seller rejected the proposed letter of credit and the Swiss bank's officer, who was present, then drafted, signed and delivered to seller a memorandum promising that a new clean letter of credit in seller's favor and payable in Florida would be issued and delivered in Florida to seller within five days;

d) as a result of the Swiss bank's express representations and promises, the Florida sale then closed; and

e) the Swiss bank failed to deliver to Florida seller a letter of credit at the time and upon the conditions it had promised at the closing.[2]

Respondent cites cases in which jurisdiction was denied over an out of state bank merely because it had issued a letter in favor of a plaintiff who was a resident of the forum state wherein no other related contacts existed.[3]

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[2] 907 F.2d.at 1111-113 (11th Cir. 1990), App. A-2-4.

[3] Petitioner cites to Chandler v. Barclays Bank PLC, 898 F.2d 1148 (6th Cir. 1990); and Pacific Reliant Indus. v. Amerika Samoa Bank, 901 F.2d 735 (9th Cir. 1990). The Sixth Circuit held there were insufficient minimum contacts when a Pennsylvania business had a Rhode Island bank issue customer's letter of credit for purchase of goods; when buyer rescinded his order, seller brought suit against buyer and the bank for refusing to make payment on the letter. The Third Circuit found that the letter of credit issued in connection with the sale of goods was enough to create state interest but without (1) any direct dealings with the bank; (2) without having used a forum state bank to issue or confirm the letter, and (3) without any physical presence (of bank or bank's agents) in the forum state, minimum contacts were deficient. Jet Charter has all the correct ingredients to have an opposite ruling before the Empire court in Florida, and "contacts" included activity "outside the state that has reasonably foreseeable consequences in the state..." [such as executing a letter of credit at the Swiss branch for the Florida seller])(quoting Prejean v. Sonatrach, Inc., 652 F.2d 1260 (1981); Brown v. Flowers Indus, Inc., 688 F.2d 328 (5th Cir. 1982), cert. denied, 460 U.S. 1023 (1983)(jurisdiction founds based on one phone call made from out of state that impacted within the forum state).

Petitioner would suggest that the geographic location of the bank issuing a letter of credit should not be the sole and exclusive test for determining that jurisdiction exists or does not exist over the transaction. The analysis should focus on whether the relationship of the cause of action asserted by the complaint with the contacts within the forum state arises from purposeful acts of the defendant.

From a simple practical viewpoint, Florida has a great deal more to do with this transaction than Switzerland. The Swiss bank's role in the Florida Closing was not only purposeful, it was central and essential. Efforts to depict the role of the bank's officer as deminimus strains incredulity. Respondent bank blithfully asserts: "...neither Caillet nor the bank received anything from the Seller and no pecuniary benefit of any kind." (emphasis added). (Brief for Respondent in Opposition, at 2). Even Swiss banks do not provide 26 million dollars of funds to a customer (Purchaser) for free. The deal closed because of the bank's promises to the Florida seller (in writing) made in Florida and to be performed in Florida.

International and inter-state banking and financing of of sales transaction are a vital part of commerce. The determination of the question involving jurisdiction of banks that participate in such transactions is significant.[4]

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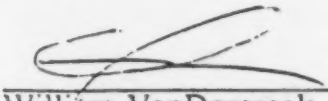
[4] See discussion of cases in note 3, supra. Compare the somewhat analogous problem of Rosenburg Brothers & Co. v. Curtis Brown Co., 260 U.S. 516 (1923), and the comment of Justice White in Lakeside Bridge & Steel Co. v. Mountain State Construction Co., 445 U.S. at 907-911,:

> The question of personal jurisdiction over a nonresident corporate defendant based on contractual dealings with a resident plaintiff has deeply divided the federal and state courts. [Cites omitted]. The question at issue is one of considerable importance to contractual dealings be[-]tween purchasers and sellers located in different states. The disarray among federal and state courts noted above may well have a disruptive effect on commer[-]cial relations in which certainty of result is a prime objective. That disarray also strongly suggests that prior decisions of this court offer no clear guidance on the question.

The Eleventh Circuit opinion, contrary to rational of other state and federal courts, would shield and insulate a foreign bank from the judicial power of a state wherein its actions caused harm. Compare the libel case of Calder v. Jones, 465 U.S. 783 (1984) "an individual injured in California need not go to Florida to seek redress from persons who, though remaining in Florida, knowingly caused the injury in California." Although courts seem to readily find jurisdiction over torts committed in whole or in part within to the forum state, contract actions, as reflected by the decision below , seem to produce confusion and even attempts to apply standards necessary for so-called general jurisdiction. This Court in McKee, 355 U.S. 220, certainly did not suggest a different constitutional test for jurisdiction existed whether the action was grounded in tort or contract. Indeed, as this Court knows, International Shoe, 326 U.S. 310, the source of the traditional notions of fair play and justice approach to jurisdiction, was not a tort case.

Respectfully submitted,



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